

STATUTORY REFERENCES

1. Prohibition. A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

- A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
- B. Freshwater wetlands consisting of or containing:
 - (1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
 - (2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

2. Activities requiring a permit. The following activities require a permit:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction, repair or alteration of any permanent structure.

3. Application.³

4. Significant groundwater well. A person may not perform or cause to be performed the establishment or operation of a significant groundwater well without first obtaining a permit from the department.⁴

§ 480-D. Standards

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards set forth in subsections 1 to 9, except that when an activity requires a permit only because it is located in, on or over a community public water system primary protection area the department shall issue a permit

³Repeal effective October 1, 1994. The repealed text read: "This section applies to all protected natural resources statewide without regard to whether they have been mapped pursuant to section 480-L. Significant wildlife habitat that is not within any other protected natural resource must be mapped before this section applies." For applicability requirements now, see Section 480-V and 480-E-1.

⁴ PL 2007, ch. 399(13) provided: "Sec. 13. Transition. If a person who requires a permit for establishment or operation of a significant groundwater well from the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 480-C is authorized to transport water pursuant to Title 22, section 2660-A on the effective date of this Act and applies for a permit for establishment or operation of the significant groundwater well prior to expiration of the water transport authorization, the person may continue to withdraw water until final agency action on the permit application."

when it finds that the applicant has demonstrated that the proposed activity meets the standards set forth in subsections 2 and 5.⁵

1. Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

In making a determination under this subsection regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, the department shall consider the development's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.⁶

2. Soil erosion. The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat.

4. Interfere with natural water flow. The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

5. Lower water quality. The activity will not violate any state water quality law, including those governing the classification of the State's waters.

6. Flooding. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

7. Sand supply. If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

⁵ A permit is not required under the Maine Revised Statutes, Title 38, chapter 3, article 5-A for an activity located in, on or over a community public water system primary protection area until the effective date of the rules provided for PL 2007, ch. 353(14), unless a permit is otherwise required under the Maine Revised Statutes, Title 38, section 480-C. PL 2007, ch. 353(14).

⁶ This paragraph beginning "In making a determination..." is effective April 18, 2008. See PL 2007, c. 661. For text of Title 35-A, section 3552, see Appendix B of this handout.

8. Outstanding river segments. If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

9. Dredging.⁷ If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

- A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;
- B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and
- C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

10. Significant groundwater well. If the proposed activity includes a significant groundwater well, the applicant must demonstrate that the activity will not have an undue unreasonable effect on waters of the State, as defined in section 361-A, subsection 7, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

§ 480-E. Permit processing requirements

⁷Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

Sec. 2. Application. This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.

This section was later amended by Laws 1999, ch. 248, § 1.

5. General Standards. The following standards apply to all projects as described in Section 2.

- A. Avoidance.** The activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.

For an activity proposed in, on or over wetlands of special significance, a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable, unless the activity is described in paragraph (1), (2) or (3) below. An applicant proposing an activity described in paragraph (1), (2) or (3) below shall provide an analysis of alternatives (see Section 9(A)).

- (1) **Certain types of projects.** The activity is necessary for one or more of the purposes specified in subparagraphs (a) - (g).
- (a) Health and safety;
 - (b) Crossings by road, rail or utility lines;
 - (c) Water dependent uses;
 - (d) Expansion of a facility or construction of a related facility that cannot practicably be located elsewhere because of the relation to the existing facility, if the existing facility was constructed prior to September 1, 1996;
 - (e) Mineral excavation and appurtenant facilities;
 - (f) Walkways; or
 - (g) Restoration or enhancement of the functions and values of the wetlands of special significance.
- (2) **Wetlands with aquatic vegetation, emergent marsh vegetation or open water (Section 4(A)(5) wetlands of special significance).** The activity is for a purpose other than specified in Section 5(A)(1)(a) - (g), is located in, on or over a wetlands of special significance having those characteristics described in Section 4(A)(5); and
- (a) The activity is located at least 250 feet from aquatic vegetation, emergent marsh vegetation, or open water as described in Section 4(A)(5); and
 - (b) The activity does not unreasonably adversely affect the functions and values of the aquatic vegetation, emergent marsh vegetation, or open water, as described in Section 4(A)(5), or the functions and values of the freshwater wetlands that are enhanced or served by the aquatic vegetation, emergent marsh vegetation or open water.

- (3) Certain activity on a pier, wharf, dock or other structure constructed before the effective date of this chapter. An activity is located on a pier, wharf, dock or other structure over a coastal wetland and;
 - (a) The commissioner has reviewed and approved an alternative set of standards pursuant to 38 M.R.S.A. § 438-A(2) that would potentially allow a non water-dependent use; and
 - (b) The pier, wharf, dock or other structure was constructed prior to June 30, 1990 and is still in existence on the date of the application.

NOTE: When making decisions pursuant to 38 M.R.S.A. §438-A(2) regarding alternative shoreland zoning standards, the department considers requests to allow non-water-dependent uses narrowly, consistent with coastal policies reflected in the Mandatory Shoreland Zoning Act (MSZA) and adopted guidelines. The department considers potential effects on existing, traditional working waterfront uses.

- B. Minimal Alteration.** The amount of wetland to be altered must be kept to the minimum amount necessary.
- C. Compensation.** Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.

In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention which reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

- (1) When required. Compensation is required when the department determines that a wetland alteration will cause a wetland function or functions to be lost or degraded as identified by a functional assessment (see paragraph 2 below) or by the department's evaluation of the project. If a functional assessment is not required under this rule, no compensation will be required unless the department identifies wetland functions that will be lost or degraded.
- (2) Functional assessment. Resource functions that will be lost or degraded are identified by the department based upon a functional assessment done by the applicant and by the department's evaluation of the project. The functional assessment must be conducted in accordance with Section 9(B)(3) for all activities except for those listed in Section 5(C)(6) below.
- (3) Location of compensation projects. The compensation must take place in a location:

minimal effect on freshwater wetland functions and values, significant wildlife habitat or imperiled or critically imperiled community due to the activity;

- (ii) Alterations of less than 15,000 square feet in a freshwater wetland not of special significance, provided that the department determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;
- (iii) Alterations in a freshwater wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water line on both sides, measured perpendicular to the thread of the river, stream or brook, provided:
 - a. Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and
 - b. The total project affects 500 square feet or less of the channel.
- (b) Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries & Wildlife as applicable.
- (c) Great Ponds. A great pond alteration that does not place any fill below the normal high water line, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries & Wildlife or the Department of Environmental Protection.
- (d) Rivers, streams or brooks. A river, stream or brook alteration that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.
- (e) Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.
- (7) Waiver. The department may waive the requirement for a functional assessment, compensation, or both. The department may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The department may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

D. No Unreasonable Impact

- (1) Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the

standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met. In making this determination, the department considers:

- (a) The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;
 - (b) The functions and values provided by the wetland;
 - (c) Any proposed compensation and the level of uncertainty regarding it; and
 - (d) Cumulative effects of frequent minor alterations on the wetland.
- (2) Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:
- (a) The wetland alteration will not disturb the threatened or endangered species; and
 - (b) The overall project will not affect the continued use or habitation of the site by the species.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the department considers factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).

6. Wetland Compensation Standards. Where compensation is required, the following standards apply:

NOTE: If the department's requirements for compensation are otherwise met, additional areas of compensation required by U.S. Army Corps of Engineers do not also have to meet the department's requirements for compensation.

- A. Expertise.** The applicant shall demonstrate sufficient scientific expertise to carry out the proposed compensation work.
- B. Financial Resources.** The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions.
- C. Persistence.** For restoration, enhancement and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions after a period of three years unless otherwise approved by the department. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the department may require additional monitoring and corrective action, or additional wetland restoration, enhancement or creation in order to achieve the compensation ratio as originally approved.

Chapter 315: ASSESSING AND MITIGATING IMPACTS TO EXISTING SCENIC AND AESTHETIC USES

SUMMARY: This chapter describes the process for evaluating impacts to existing scenic and aesthetic uses resulting from activities in, on, over, or adjacent to protected natural resources subject to the Natural Resources Protection Act, pursuant to 38 M.S.R.A. § 480-D (1).

- 1. Introduction.** In the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§ 480-A through Z, the Legislature has found and declared that Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands, and sand dune systems are resources of state significance. Section 480-A states that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources. The Legislature's recognition of the scenic beauty of these protected natural resources through statute distinguishes the visual quality of those resources and its value to the general population.

Applicants for permits under the NRPA are required to demonstrate that a proposed activity meets the standards of the NRPA that have been established by the Legislature. Standard 1 in Section 480-D of the NRPA requires an applicant to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses.

- 2. Purpose.** This rule specifies State regulatory concerns, defines visual impacts, establishes a procedure for evaluating visual impacts generated from proposed activities, establishes when a visual assessment may be necessary, explains the components of a visual assessment when required, and describes avoidance, mitigation, and offset measures that may eliminate or reduce unreasonable adverse impacts to existing scenic and aesthetic uses.
- 3. Applicability.** This rule applies to the alteration of a coastal wetland, great pond, freshwater wetland, fragile mountain area, river, stream, or brook, as defined in 38 M.S.R.A. § 480-B of the Natural Resources Protection Act (NRPA), that requires an individual permit or is eligible for Tier 3 review. This rule does not apply to an activity that is exempt from permit requirements under the NRPA or that qualifies for a Tier 1 or Tier 2 permit. This rule does not apply to a Permit by Rule unless the Department exercises its discretionary authority to require an individual permit as described in Chapter 305, Section 1 (D). In the review of an application for a permit, the Department must evaluate the potential for unreasonable adverse visual impacts resulting from a proposed activity located in, on, over, or adjacent to a protected natural resource.
- 4. Scope of Review.** The potential impacts of a proposed activity will be determined by the Department considering the presence of a scenic resource listed in Section 10, the significance of the scenic resource, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the project purpose, and the context of the proposed activity. Unreasonable adverse visual impacts are those that are expected to unreasonably interfere with the general public's visual enjoyment and appreciation of a scenic resource, or those that otherwise unreasonably impair the character or quality of such a place.
- 5. Definitions.** As used in these rules, the following terms have the following meanings. Other terms used in these rules have the meanings set forth at 38 M.S.R.A. § 480-X and Chapter 310, the Wetlands and Waterbodies Protection Rules.

- A. **Adverse visual impact.** The negative effect of a regulated activity on the visual quality of a landscape.
 - B. **Composition.** The arrangement of the component parts of a landscape. Component parts are objects or activities usually described in terms of color, texture, line, form, dominance, and scale.
 - C. **Contrast.** Comparing the component parts of a landscape in terms of form, line, color, texture, dominance, or scale.
 - D. **Existing uses.** The current appearance and use of the landscape, considering previous human alterations.
 - E. **Landscape.** An area characterized by its geology, landform, biota, and human influences throughout that area.
 - F. **Mitigation.** Any action taken or not taken to avoid, minimize, rectify, reduce, or eliminate actual or potential adverse environmental impact, including adverse visual impact.
 - G. **Practicable.** Available and feasible considering cost, existing technology and logistics based on the overall purpose of the activity.
 - H. **Scenic Resource.** Public natural resources or public lands visited by the general public, in part for the use, observation, enjoyment, and appreciation of natural or cultural visual qualities. The attributes, characteristics, and features of the landscape of a scenic resource provide varying responses from, and varying degrees of benefits to, humans.
 - I. **Viewshed.** The geographic area as viewed from a scenic resource, which includes the proposed activity. The viewshed may include the total visible activity area from a single observer position or the total visible activity area from multiple observers' positions.
 - J. **Visual Quality.** The essential attributes of the landscape that when viewed elicit overall benefits to individuals and, therefore, to society in general. The quality of the resource and the significance of the resource are usually, but not always, correlated.
6. **Application submissions.** An applicant is required to demonstrate that the proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource listed in Section 10. Basic evidence must be provided to ensure that visual concerns have been fully addressed in each application. The applicant must describe the location of the activity and provide an inventory of scenic resources within the viewshed of the proposed activity by completing the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application. The applicant must describe the activity relative to its location and scale within the viewshed of any scenic resource, including a description of the existing visual quality and landscape characteristics. The applicant may request a pre-application meeting during which the Department can provide guidance for determining the location of the activity relative to scenic resources in the vicinity of the applicant's parcel.
7. **Visual impact assessments.** The Department may require a visual impact assessment if a proposed activity appears to be located within the viewshed of, and has the potential to have an unreasonable adverse impact on, a scenic resource listed in Section 10. An applicant's visual

impact assessment should visualize the proposed activity and evaluate potential adverse impacts of that activity on existing scenic and aesthetic uses of a protected natural resource within the viewshed of a scenic resource, and to determine effective mitigation strategies, if appropriate. If required, a visual impact assessment must be prepared by a design professional trained in visual assessment procedures, or as otherwise directed by the Department.

In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the scenic resource from which the activity will be visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape. See Appendix A for guidance on line-of-sight profiles. For activities with more sensitive conditions, photosimulations and computer-generated graphics may be required.

A visual impact assessment must also include narratives to describe the significance of any potential impacts, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts, and steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

8. **Mitigation.** In the case where the Department determines that the proposed activity will have an adverse visual impact on a scenic resource, applicants may be required to employ appropriate measures to mitigate the adverse impacts to the extent practicable. Mitigation should reduce or eliminate the visibility of the proposed activity or alter the effect of the activity on the scenic or aesthetic use in some way. The Department will determine when mitigation should be proposed and whether the applicant's mitigation strategies are reasonable. The Department may require mitigation by requesting that the applicant submit a design that includes the required mitigation or by imposing permit conditions consistent with specified mitigation requirements.

In its determination whether adverse impacts to existing scenic and aesthetic uses are unreasonable, the Department will consider whether the applicant's activity design is visually compatible with its surroundings, incorporating environmentally sensitive design principles and components according to the strategies described below.

- A. **Planning and siting.** Properly siting an activity may be the most effective way to mitigate potential visual impacts. Applicants are encouraged, and may be required, to site a proposed activity in a location that limits its adverse visual impacts within the viewshed of a scenic resource.
- B. **Design.** When circumstances do not allow siting to avoid visual impacts on a scenic resource, elements of particular concern should be designed in such a way that reduces or eliminates visual impacts to the area in which an activity is located, as viewed from a scenic resource. Applicants should consider a variety of design methods to mitigate potential impacts, including screening, buffers, earthen berms, camouflage, low profile, downsizing, non-standard materials, lighting, and other alternate technologies.

- C. **Offsets.** Correction of an existing visual problem identified within the viewshed of the same scenic resource as the proposed activity may qualify as an offset for visual impacts when an improvement may be realized. Offsets may be used in sensitive locations where significant impacts from the proposal are unavoidable or other forms of mitigation might not be practicable. An example of an offset might be the removal of an existing abandoned structure that is in disrepair to offset impacts from a proposal within visual proximity of the same scenic resource. Offsets can also include visual improvements to the affected landscape, such as tree plantings or development of scenic overlooks.
9. **Determination.** It is the responsibility of the applicant to demonstrate that the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource, and that any potential impacts have been minimized.

The Department's determination of impact is based on the following visual elements of the landscape:

- A. **Landscape compatibility,** which is a function of the sub-elements of color, form, line, and texture. Compatibility is determined by whether the proposed activity differs significantly from its existing surroundings and the context from which they are viewed such that it becomes an unreasonable adverse impact on the visual quality of a protected natural resource as viewed from a scenic resource;
- B. **Scale contrast,** which is determined by the size and scope of the proposed activity given its specific location within the viewshed of a scenic resource; and
- C. **Spatial dominance,** which is the degree to which an activity dominates the whole landscape composition or dominates landform, water, or sky backdrop as viewed from a scenic resource.

In making a determination within the context of this rule, the Department considers the type, area, and intransience of an activity related to a scenic resource that will be affected by the activity, the significance of the scenic resource, and the degree to which the use or viewer expectations of a scenic resource will be altered, including alteration beyond the physical boundaries of the activity. In addition to the scenic resource, the Department also considers the functions and values of the protected natural resource, any proposed mitigation, practicable alternatives to the proposed activity that will have less visual impact, and cumulative effects of frequent minor alterations on the scenic resource. An application may be denied if the activity will have an unreasonable impact on the visual quality of a protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An "unreasonable impact" means that the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met.

10. **Scenic resources.** The following public natural resources and public lands are usually visited by the general public, in part with the purpose of enjoying their visual quality. Under this rule, the Department considers a scenic resource as the typical point from which an activity in, on, over, or adjacent to a protected natural resource is viewed. This list of scenic resources includes, but is not limited to, locations of national, State, or local scenic significance. A scenic resource visited by large numbers who come from across the country or state is generally considered to have national or statewide significance. A scenic resource visited primarily by people of local origin is

generally of local significance. Unvisited places either have no designated significance or are "no trespass" places. Sources for information regarding specific scenic resources are found as part of the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application.

- A. National Natural Landmarks and other outstanding natural and cultural features (e.g., Orono Bog, Meddybemps Heath);
 - B. State or National Wildlife Refuges, Sanctuaries, or Preserves and State Game Refuges (e.g., Rachael Carson Salt Pond Preserve in Bristol, Petit Manan National Wildlife Refuge, the Wells National Estuarine Research Reserve);
 - C. A State or federally designated trail (e.g., the Appalachian Trail, East Coast Greenway);
 - D. A property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (e.g., the Rockland Breakwater Light, Fort Knox);
 - E. National or State Parks (e.g., Acadia National Park, Sebago Lakes State Park);
 - F. Public natural resources or public lands visited by the general public, in part for the use, observation, enjoyment and appreciation of natural or cultural visual qualities (e.g., great ponds, the Atlantic Ocean).
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STATUTORY AUTHORITY: 38 M.R.S.A. § 480-A

ADOPTED DATE:

June 5, 2003

EFFECTIVE DATE:

June 29, 2003 - filing 2003-198